

DISTRICT OF COLUMBIA  
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ALCOHOLIC BEVERAGE CONTROL BOARD  
+ + + + +  
MEETING

IN THE MATTER OF:

Restaurant Enterprises, Inc.	
t/a Smith Point	Show Cause
1338 Wisconsin Ave., NW	Hearing
Retailer CT - ANC-2B	(Status)
License No. 60131	
Case #14-CMP-00473	

(Provided Entertainment  
Without an Entertainment  
Endorsement)

June 10, 2015

The Alcoholic Beverage Control Board  
met in the Alcoholic Beverage Control Hearing  
Room, Reeves Building, 2000 14th Street, N.W.,  
Suite 400S, Washington, D.C. 20009, Chairperson  
Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson  
NICK ALBERTI, Member  
DONALD BROOKS, Member  
MIKE SILVERSTEIN, Member  
HECTOR RODRIGUEZ, Member  
JAMES SHORT, Member

ALSO PRESENT:

CHRISSY GEPHARDT, OAG

1 P-R-O-C-E-E-D-I-N-G-S

2 9:54 a.m.

3 CHAIRPERSON MILLER: All right. So  
4 that brings us to our first Fact-Finding Hearing.

5 MS. GEPHARDT: Oh, it's a Fact-  
6 Finding?

7 CHAIRPERSON MILLER: Do you have any--

8 MS. GEPHARDT: Oh --

9 CHAIRPERSON MILLER: We do have a  
10 Fact-Finding Hearing scheduled next.

11 Do you have a request that --

12 MS. GEPHARDT: Oh, yes, no. I have  
13 one for Smith Point.

14 CHAIRPERSON MILLER: Okay. We can  
15 take -- that's short, correct?

16 MS. GEPHARDT: Yes. Well, it's an  
17 OIC.

18 CHAIRPERSON MILLER: All right. We  
19 are going to take Smith Point ahead then.

20 MS. GEPHARDT: Great.

21 CHAIRPERSON MILLER: Okay. Smith  
22 Point, is somebody here from Smith Point? All

1 right. Why don't you introduce yourselves for  
2 the record, please?

3 MS. GEPHARDT: Chrissy Gephardt here  
4 on behalf of the Office of the Attorney General  
5 for the District of Columbia.

6 MR. KLINE: Good morning, Andrew Kline  
7 on behalf of the licensee.

8 MR. BLAIR: Robert Blair, licensee.

9 CHAIRPERSON MILLER: Okay. Good  
10 morning. Mr. Kline, did your client receive  
11 notice of this hearing?

12 MR. KLINE: Yes. We received it, read  
13 it, understood it and we waive any required  
14 formal reading.

15 CHAIRPERSON MILLER: Okay. And are  
16 there any preliminary issues?

17 MS. GEPHARDT: Yes. There is a  
18 preliminary matter. The parties have reached an  
19 Offer in Compromise which consists of a fine of  
20 \$500 to be paid within 30 days, otherwise the  
21 license would be immediately suspended.

22 CHAIRPERSON MILLER: Okay. Could you

1 refresh the Board's memory then as to what the  
2 charge is and what tier of violation?

3 MS. GEPHARDT: Let's see, the charge--

4 MR. KLINE: If I may? This is an  
5 entertainment endorsement --

6 CHAIRPERSON MILLER: Okay.

7 MR. KLINE: -- charge. It stems out  
8 of the continuing misunderstanding or confusion  
9 as to what exactly constitutes a DJ and what  
10 exactly constitutes prerecorded music, which we  
11 believe has finally been cleared up by the most  
12 recent amendments to the ABC Law, so we don't  
13 expect to be back here on these issues again, but  
14 that's what this involves and Mr. Blair  
15 understands in terms of what -- how the law has  
16 been clarified and that the use of DJ in a DJ  
17 booth are -- or the use of a person programming  
18 music in a DJ booth constitutes entertainment  
19 requiring an entertainment endorsement.

20 So that's all clear at this point.

21 And we would like to get this resolved and we are  
22 fine with this Offer in Compromise. And this is

1 a secondary tier violation.

2 CHAIRPERSON MILLER: And what's the  
3 statute or the reg, because I think there is a  
4 discrepancy in our notes, so that's why I'm  
5 asking.

6 MS. GEPHARDT: Isn't it 25-762(b)(4)?

7 MEMBER ALBERTI: What is the -- is  
8 that what the charging document says? I mean,  
9 the charging document says?

10 MR. KLINE: It's -- there seems to be,  
11 as I recall, a typo --

12 MS. GEPHARDT: Oh, I see it.

13 MR. KLINE: -- in the charging  
14 document.

15 MS. GEPHARDT: Yes. It -- right. It  
16 says 4, but the (b) was left off.

17 MR. KLINE: You are correct about  
18 that.

19 MS. GEPHARDT: What I'm just becoming  
20 aware of here is information in his file.

21 CHAIRPERSON MILLER: Okay.

22 MEMBER ALBERTI: Oh, understood. So

1 you believe that the charging document should  
2 have said 25-762(b)(4)?

3 MS. GEPHARDT: Right.

4 MEMBER ALBERTI: All right. Well, I'm  
5 not going to argue the (b). I understand that.

6 MS. GEPHARDT: Right, right.

7 MEMBER ALBERTI: All right. So it's  
8 failure to obtain approval to provide for an  
9 expanded entertainment area, that's what the  
10 charging document says.

11 MS. GEPHARDT: It was about having a  
12 DJ booth and a DJ playing music without an  
13 entertainment endorsement.

14 MEMBER ALBERTI: Well, that's not --  
15 all right. Can we take a moment and go back and  
16 take a look at the regs on this one?

17 MS. GEPHARDT: Okay.

18 MEMBER ALBERTI: Ms. Miller? Because  
19 I have confusing documentation in front of me.  
20 Not -- just in general about the regs.

21 CHAIRPERSON MILLER: All right.

22 MEMBER ALBERTI: So let me go get a

1 copy of these.

2 MR. KLINE: I mean, just so we are  
3 clear, there is no 762.4. And in discussing this  
4 with Ms. Phillips who is the Assistant AG that  
5 was assigned to this case, there was discussion  
6 that we were talking about 25-762(b)(4).

7 MEMBER ALBERTI: Mr. Kline, I got  
8 that.

9 MR. KLINE: Okay.

10 MEMBER ALBERTI: It's not the (b) that  
11 is confusing me. I got that, Mr. Kline.

12 CHAIRPERSON MILLER: Okay. Let's all  
13 get clear before this Board breaks or anything as  
14 to what you see the charge is, so that we make  
15 sure that we are on the same page looking at the  
16 right charge.

17 MEMBER ALBERTI: Well, the charging  
18 document says 25-762(b)(4). I think we all agree  
19 on that. I think we all agree that that is what  
20 the charging documents says.

21 CHAIRPERSON MILLER: Okay.

22 MEMBER ALBERTI: Am I correct, Ms.

1 Gephardt?

2 MS. GEPHARDT: I'm sorry? I'm sorry,  
3 I apologize.

4 MEMBER ALBERTI: The charge that was--  
5 the charging document, all right, says 762(4)(4).

6 MS. GEPHARDT: That's correct.

7 MEMBER ALBERTI: I know there is a  
8 typo, but it's (b)(4).

9 MS. GEPHARDT: (b)(4), right.

10 MEMBER ALBERTI: All right. So that's  
11 what we are working with right now. Okay. Fine.  
12 Great.

13 MS. GEPHARDT: That's what the  
14 charging document says, correct.

15 MEMBER ALBERTI: Right. I will  
16 explain my confusion in a moment, if necessary.

17 Part of my confusion is are you sure  
18 that that is providing entertainment without an  
19 endorsement or is that expanded area?

20 MS. GEPHARDT: Well --

21 MEMBER ALBERTI: Expanding the area?

22 MS. GEPHARDT: Expanding -- no. It's

1 the providing entertainment without an  
2 endorsement.

3 MEMBER ALBERTI: Is that what that reg  
4 says?

5 MS. GEPHARDT: I have to be honest, I  
6 don't have it.

7 MR. KLINE: 762(b)(4) says "Provide  
8 for, or expand, an area in which live  
9 entertainment would be performed by employees of  
10 the establishment, patrons, contract employees,  
11 or self-employed individuals, such as dancers or  
12 disc jockeys." That's what it --

13 MEMBER ALBERTI: All right. Now,  
14 does --

15 MR. KLINE: That's the statute.

16 MEMBER ALBERTI: -- the licensee  
17 currently have an entertainment endorsement?

18 MR. KLINE: No. The licensee plans  
19 not to offer entertainment as --

20 MEMBER ALBERTI: All right.

21 MR. KLINE: -- defined by the statute.

22 MEMBER ALBERTI: All right. Here is

1 my confusion, just for the record. Well, I think  
2 we have to go. I mean, that's -- the charge was  
3 72 -- 762(b)(4), right?

4 MS. GEPHARDT: Yes.

5 MEMBER ALBERTI: And the penalty that  
6 -- that is a secondary.

7 CHAIRPERSON MILLER: Correct.

8 MEMBER ALBERTI: According to our Fine  
9 Schedule.

10 MR. KLINE: Right.

11 MEMBER ALBERTI: I would have thought  
12 that the charge -- maybe I shouldn't be saying  
13 this, but I was expecting a charge of providing  
14 entertainment without an endorsement to be made,  
15 which is a different statute.

16 MS. GEPHARDT: Yes.

17 MEMBER ALBERTI: But that is not the  
18 statute that was brought forth or forward here  
19 and charged, so that's it. We will go forward  
20 with the -- with this. This is a first or second  
21 secondary?

22 MS. GEPHARDT: This is a second

1 secondary.

2 MEMBER ALBERTI: Second secondary?

3 MS. GEPHARDT: Yes, that's correct.

4 MEMBER ALBERTI: And you have an Offer  
5 in Compromise of \$500?

6 MS. GEPHARDT: \$500 to be paid in 30  
7 days.

8 MEMBER ALBERTI: Okay. I get it. All  
9 right. Thank you very much.

10 CHAIRPERSON MILLER: Okay.

11 MR. KLINE: For the record, I think  
12 this is the first secondary within two years.

13 MEMBER ALBERTI: Well, we have an  
14 Offer in Compromise before us, so let's deal with  
15 that. That's what I'm suggesting, Ms. Miller, is  
16 to deal with the Offer in Compromise.

17 CHAIRPERSON MILLER: Right. I think  
18 we will.

19 MR. KLINE: Right. I just wanted to  
20 make sure the Board has the facts as they  
21 consider the --

22 MEMBER ALBERTI: I understand, Mr.

1 Kline.

2 MR. KLINE: -- Offer in Compromise.

3 CHAIRPERSON MILLER: Right. To know  
4 which -- what the penalty range is. If it's a  
5 first, the penalty range on our regulations is, I  
6 think, \$250 to \$500. If it's a second, it's \$500  
7 to \$750.

8 MR. KLINE: Correct.

9 CHAIRPERSON MILLER: Either way the  
10 \$500 is in the range. Okay. Any other comments  
11 or questions?

12 Okay. So, Mr. Kline, does your client  
13 accept the Offer in Compromise of a \$500 fine  
14 payable within 30 days, if not paid within 30  
15 days, the license would be suspended?

16 MR. KLINE: Yes. And the licensee  
17 understands that if the Offer in Compromise is  
18 accepted by the Board, that the licensee waives  
19 it right to hearing and right to appeal.

20 CHAIRPERSON MILLER: Okay. Good. All  
21 right. Any other questions?

22 Okay. Then, at this point, I move

1 that we approve this Offer in Compromise of a  
2 fine of \$500 to be paid within 30 days. If not  
3 paid within 30 days, the license will be  
4 suspended until paid. Do I have a second?

5 MEMBER SILVERSTEIN: Second.

6 CHAIRPERSON MILLER: Mr. Silverstein  
7 has seconded the motion.

8 All those in favor say aye.

9 ALL: Aye.

10 CHAIRPERSON MILLER: All those  
11 opposed? All those abstaining? The motion  
12 passes 6-0-0.

13 MR. KLINE: Thank you.

14 CHAIRPERSON MILLER: Okay. Thank you  
15 very much.

16 MS. GEPHARDT: Thank you.

17 (Whereupon, the Show Cause (Status)  
18 Hearing in the above-entitled matter was  
19 concluded at 10:04 a.m.)  
20  
21  
22

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